



UNITED STATES
PATENT AND
TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY
AND DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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In re Application of
Gary Blissard et al
Serial No.: 09/518,763
Filed: March 3, 2000
Attorney Docket No.: BTI-44

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: WITHDRAWAL OF ABANDONMENT
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This is in response to the petition under 37 CFR 1.181, filed April 10, 2002, requesting withdrawal of the holding of abandonment of the above identified application.

A review of the file history shows that the examiner mailed a Final Office action to applicants on April 12, 2001, setting a three month shortened statutory period for reply. On April 23, 2001, June 11, 2001, July 23, 2001 and August 13, 2001, applicants held telephonic interviews with the examiner. Applicants filed a first Amendment After Final rejection (AAF) on August 16, 2001, including a one month extension of time. Because the directions regarding cancellation of claims were not clear, the examiner mailed an Advisory Action to applicants on August 29, 2001, indicating the problems, but indicating that claims 45-50 would be allowable if all other claims were canceled, and also requiring for the first time submission of a new sequence disk since the sequence of Figure 1 was not included on the original disk. A second AAF was filed on September 17, 2001, including a second one month extension of time and a new sequence disk. On September 18, 2001, applicants conducted another telephone interview with the examiner. In a subsequent telephone interview on September 28, 2001, the examiner indicated all claims (i.e. - 45-51) allowable and the case as allowable pending processing of the sequence disk. No formal Advisory Action was mailed stating this. The disk was processed on October 1, 2001, and found to contain errors, however the results were not received by the examiner until after November 16, 2001. The reason for the delay is unclear. The examiner then informed applicants of the defective disk in a telephone interview on January 2, 2002, and mailed a Notice of Abandonment on January 3, 2002. Applicants filed a new sequence disk on April 10, 2002, as well as this petition under 37 CFR 1.181 and a concurrent petition under 37 CFR 1.137(b). Because the two petitions are decided in different areas of the Office, a delay was occasioned as to which petition should be decided first.

In reviewing the above prosecution history, it is clear that the requirement for a new sequence disk arose only with the mailing of the Advisory action in reply to the first AAF. It is also noted that the sequence disk filed with the original application papers was not defective and was accepted by the Office. Based on this disk the examination was conducted. It was only in anticipation of allowance of the application that a question arose with respect to the presence or absence of the sequence of Figure 1 in electronic form. Placing the sequence on a disk and

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submitting it to the Office is a formality requirement which does not affect patentability inasmuch as the printed copy of the sequence is part of the specification and drawings. Placing it on disk, however, allows it to be available in electronic form for searching and other purposes. Thus the requirement for the new sequence disk did not affect the patentability of the application which, as indicated telephonically by the examiner, was in condition for allowance with the submission of the last amendment. In this instance, and especially since the requirement for a new sequence was not made until mailing of the Advisory Action, the proper course of action would have been for the examiner to mail applicants an *ex parte Quayle* Office action requiring submission of a corrected sequence disk.

In view of the above the Notice of Abandonment is withdrawn and the application restored to pending status with the mailing of this decision.

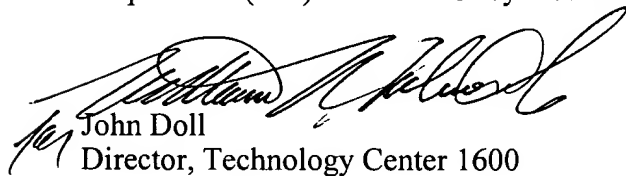
Applicants' petition under 37 CFR 1.181 is **GRANTED**. Inasmuch as the petition under 37 CFR 1.181 is granted, the petition under 37 CFR 1.137(b) is dismissed as moot.

As there is not fee for this petition the petition fee paid of \$130.00 will be credited to applicants' Deposit Account No., 02-0910, as directed.

In addition, the petition fee of \$640.00 for the petition under 37 CFR 1.137(b) will also be credited to applicants' Deposit Account No., 02-0910, as directed.

The application will be forwarded to the examiner for preparation of the Notice of allowability and Notice of allowance and Issue Fee Due.

Should there be any questions with regard to this letter please contact William R. Dixon, Jr. by letter addressed to the Director, Technology Center 1600, Washington, DC 20231, or by telephone at (703) 308-3824 or by facsimile transmission at (703) 305-7230.


John Doll
Director, Technology Center 1600

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